

Maine Revised Statutes
Title 34-B: BEHAVIORAL AND DEVELOPMENTAL SERVICES
Chapter 7: DUE PROCESS IN STERILIZATION ACT OF 1982

§7013. HEARING UPON A PETITION TO DETERMINE THE BEST INTEREST OF A PERSON BEING CONSIDERED FOR STERILIZATION

1. Ability to give or withhold informed consent. In all instances where the issue of whether sterilization is in the best interest of a person is to be considered, a prior determination, as required by section 7008, that the person cannot give or withhold informed consent shall be required.

[1983, c. 459, §7 (NEW) .]

2. Presence of person; counsel; findings. The person being considered for sterilization shall be physically present throughout the entire best interest hearing, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The person being considered for sterilization shall be represented by counsel and provided the right and opportunity to be confronted with and to cross-examine all witnesses. The right to counsel may not be waived. If the person cannot afford counsel, the court shall appoint an attorney, not less than 20 days before the scheduled hearing, to represent the person at public expense. A reasonable fee shall be set for appointed counsel by the District Court. Counsel shall represent the person being considered for sterilization in assuring that information and evidence in opposition to sterilization without informed consent is fully represented. All stages of the hearing shall be recorded by a tape recorder or a court reporter, as the court may direct. In all cases, the court shall issue written findings to support its decision.

[1983, c. 459, §7 (NEW) .]

3. Disinterested experts; evidence. The court shall hear the petition to determine whether sterilization is in the best interest of the person being considered for sterilization. The court shall appoint not less than 3 disinterested experts with experience related to the condition of the person as alleged in the petition, including at least one physician and one licensed psychologist or psychiatrist, to examine the person and to testify at the hearing. The court shall hear and consider evidence on the following:

A. All issues raised by the petition executed under section 7011; and [1983, c. 459, §7 (NEW) .]

B. The beneficial or detrimental psychological and physiological effects of sterilization on the person being considered for sterilization. [1983, c. 459, §7 (NEW) .]

Any other relevant evidence concerning the mental and physical condition of the person being considered for sterilization may be introduced at the hearing.

[1983, c. 459, §7 (NEW) .]

4. Burden of proof. The burden of proof by clear and convincing evidence that sterilization is in the best interest of the person being considered for sterilization shall rest with the party seeking to establish that sterilization is the appropriate course of action.

[1983, c. 459, §7 (NEW) .]

5. Finding that sterilization is in person's best interest. The court shall find that sterilization is in the best interest of the person being considered for sterilization if it is shown by clear and convincing evidence that:

A. Methods of contraception less drastic than sterilization have proven to be unworkable or inappropriate for the person; and [1983, c. 459, §7 (NEW).]

B. Sterilization is necessary to preserve the physical or mental health of the person. [1983, c. 459, §7 (NEW).]

6. Court order. If the court finds that sterilization is in the best interest of the person being considered for sterilization, the court shall order that sterilization may be performed. The sterilization procedure used shall be the most reversible procedure available at the time when, in the judgment of the physician performing the sterilization, that procedure is not inconsistent with the health or safety of his patient. If the court finds that sterilization is not in the best interest of the person being considered for sterilization, the court shall order that sterilization may not be performed, unless the order is amended by a District Court to permit sterilization.

[1983, c. 459, §7 (NEW).]

7. Appeal. Appeal of a final order of a District Court shall be by right in accordance with the Maine Rules of Civil Procedure, except that, upon a finding of inability to pay the required fees for an appeal, those fees shall be waived. Pendency of an appeal of an order under this section shall stay any order allowing sterilization.

[1983, c. 459, §7 (NEW).]

SECTION HISTORY

1983, c. 459, §7 (NEW).

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